destroyed by some obvious operation of nature, as by fire. Accordingly, Michigan [6] and Vermont [7] have adopted an intermediate rule. An insurer's liability is imposed in cases of disappearance of the guest's property, but only a *prima facie* liability where the loss is caused by a natural casualty. A recent Minnesota case, involving the destruction of a guest's property by fire, in effect adopts this rule, qualifying the language of a previous decision [8] in that state. *Johnson* v. *Chadbourn Finance Co.*, 94 N. W. Rep. 874. This rule seems to attain justice without sacrificing the restraining influence of the insurer's liability. In view of the diversity of decisions, policy may well determine what rule should be adopted. The principal case in applying the intermediate rule carefully excludes cases of theft, and thus obtains a very happy adaptation of justice to the needs of the case.

FORFEITURE IN EQUITY. — In cases of contracts for the sale of land where time is stipulated to be of the essence and where the vendee agrees in case of default to forfeit payments already made, courts of equity are not in accord as to what relief, if any, should be given a defaulting vendee. The rule in England is on payment of the balance due [1] to grant specific performance to the vendee. These stipulations as to time and forfeiture are held to be inserted merely as additional security for the payment of money. If the vendor is given his principal, interest, and costs, he has, therefore, no right to complain. In certain American jurisdictions, for instance Wisconsin, the courts are more favorable to the vendor. He may either suffer specific performance or refund the payments already made.[2] In California, finally, and some few other states, equity affords the vendee no protection whatever.[3] Here a vendor may bring ejectment against a vendee in possession without returning previous payments. *Williams* v. *Long*, 72 Pac. Rep. 911 (Cal.). The argument is, that, in the absence of fraud, accident, or mistake, justice does not require that a man be relieved from the effect of agreements he knowingly made and negligently failed to observe.

It would seem that no one of these rules will in its application be universally equitable. When a court is convinced that a decree of specific performance on payment of principal, interest, and costs will give the vendor all he really bargained for, the decree should issue. But if circumstances have so changed that the results contemplated by the parties cannot be brought about, it is equally obvious that the decree should be denied. Nor is it always fair to force the vendor to refund payments he has received. He may have suffered damages even in excess of these payments. Here it would seem that the vendee should be refunded only the excess of payments, if any there be, over the real damage the vendor has suffered. The true solution would therefore seem to vary in each particular case and not to lie in any hard and fast rule. The vendee should in every case be accorded the fullest measure of relief consistent with leaving the vendor

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[6] Cutler *v.* Bonney, 30 Mich. 259.
[7] Merrit *v.* Claghorn, 23 Vt. 177.
[8] Lusk *v.* Belote, 22 Minn. 468.

[1] Vernon *v.* Stephens, 2 P. W. 66.
[2] See Hall *v.* Delaplaine, 5 Wisc. 206.
[3] Glock *v.* Howard & Wilson Colony Co., 123 Cal. 1.

in as good a position as the one for which he really bargained. But where relief can be given only at the vendor's expense, the vendee should suffer the result of his default.

THE FICTION OF CORPORATE ENTITY. — The Northern Securities decision,[1] in going behind the corporation to reach the incorporators, marks but a slight advance in the modern tendency to restrict the application of the theory of a "corporate entity." The way had been cleared for it by decisions[2] declaring that an act of all the stockholders tending to control a corporation or affect the transaction of its business — such as the transfer of all their shares to a "trust" — is the act of the corporation. In saying that the act of a corporation is the act of its stockholders, then, the Circuit Court of Appeals was but declaring the converse of this proposition. But a distinct advance in the direction of narrowing the practical scope of the separate entity theory is made in a recent case. A membership corporation sued a labor union which had declared a strike against it, for an injunction against prospective acts of violence which threatened to injure the businesses of the individual members of the corporation. No injury to corporate property was threatened; yet the court granted the injunction. *Horseshoers' Protect. Ass'n* v. *Quinlivan*, 83 N. Y. App. Div. 459. The case is in advance of the New York and Ohio cases above cited, because in them the action of the stockholders complained of was held to be, in its essence, corporate action, while here the damage was about to be suffered by the members with respect to their individual interests, the corporate business remaining unaffected. It is important to notice, however, that the members were about to suffer merely because of their membership. Identical in principle are the cases in which at the suit of a corporation the Supreme Court of the United States enjoined the levy of an unlawful tax on the shares of its stockholders.[3]

"A fiction of law shall never be contradicted," said Lord Mansfield,[4] "so as to defeat the end for which it was invented; but for every other purpose it may be contradicted." The "legal" entity, distinct from its stockholders, which has been ascribed to a corporation, is by the very force of the term a fiction "of law." And convenience — the convenience of the courts in distinguishing between the rights and liabilities, as individuals and as a body, of the natural persons who compose the corporation — seems, in brief, to have been the end for which it was introduced. At common law a failure to so distinguish would involve the courts in difficulties. For instance, in the principal case money damages recovered would be corporate assets, though the members might have suffered unequal injuries; or, if not corporate assets, how should they be distributed? For a court of law, then, to discard the idea of a legal entity might well defeat the end for which it was invented. But in Equity, since the relief obtained is the enforcement of action by third parties or the restraint of such action, the redress enures at once to each stockholder, and is exactly proportionate to what would be

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[1] United States *v.* Northern Securities Co., 120 Fed. Rep. 721.

[2] People *v.* North River Sugar Refining Co., 121 N. Y. 582; People *v.* Standard Oil Co., 49 Oh. St. 137.

[3] Cummings *v.* Nat. Bk., 101 U. S. 153; *contra*, Waseca Cty. Bk. *v.* McKenna, 32 Minn. 468.

[4] Johnson *v.* Smith, 2 Burr. 962.